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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Australia*, Austria, Belgium*, Canada, Chile, Czech Republic, Denmark, El Salvador, Finland*, France, Germany, Greece*, Hungary*, Ireland, Italy, Latvia*, Liechtenstein*, Lithuania*, Luxembourg, Netherlands*, New Zealand*, Norway*, Poland, Portugal*, Republic of Korea, Romania*, Slovakia*, Spain, Sweden*, Switzerland*, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

1998/... Torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights,

Reaffirming that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that such actions constitute a criminal attempt to destroy a fellow human being physically and mentally, which can never be justified under any circumstances, by any ideology or by any overriding interest, and convinced that a society that tolerates torture can never claim to respect human rights,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Recalling that freedom from torture and cruel, inhuman or degrading treatment or punishment is a non-derogable right and that the prohibition of torture is explicitly affirmed in article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as in the relevant provisions of other international human rights instruments such as the Convention on the Rights of the Child, the Vienna Declaration and Programme of Action, the Declaration on the Elimination of All Forms of Violence against Women and the four Geneva Conventions of 1949 for the protection of war victims,

Appalled at the widespread occurrence of torture and other cruel, inhuman or degrading treatment or punishment,

Recalling all relevant resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights, in particular Assembly resolution 51/86 of 12 December 1996 and Commission resolution 1997/38 of 11 April 1997,

Mindful of the proclamation by the General Assembly in its resolution 52/149 of 10 December 1997 of 26 June as United Nations International Day in Support of Victims of Torture,

1. Calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. Urges all Governments to promote the speedy and full implementation of the Vienna Declaration and Programme of Action (A/CONF.157/23) and, in particular, of Part II, section B.5, relating to freedom from torture, in which it is stated that States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law;

3. Reminds Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture;

4. Stresses in particular that all allegations of torture or cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority, that those who

encourage, order, tolerate or perpetrate such acts must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have taken place, and that national legal systems should ensure that the victims of such acts obtain redress and be awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation;

5. Reminds all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment;

6. Calls upon all Governments, the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies as well as relevant intergovernmental and non-governmental organizations to commemorate on 26 June the United Nations International Day in Support of Victims of Torture;

7. Takes note of the report of the Secretary-General on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1998/36/Rev.1);

8. Urges all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority;

9. Invites all States ratifying or acceding to the Convention and those States parties that have not yet done so to make the declaration provided for in articles 21 and 22 of the Convention and to avoid making, or consider the possibility of withdrawing, reservations to article 20;

10. Encourages States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

11. Urges all States parties to comply strictly with their obligations in accordance with article 19 of the Convention, including their reporting obligations, and, in particular, those States parties whose reports are long overdue to submit their reports forthwith;

12. Stresses that under article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acts of torture must be made an offence under domestic criminal law and that acts of torture during armed conflict are considered a grave breach of the Geneva Conventions of 1949, with the perpetrators liable to prosecution and punishment;

13. Emphasizes the obligation of States parties under article 10 of the Convention to ensure education and training for personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, and calls upon the United Nations High Commissioner for Human Rights, in conformity with her mandate established in General Assembly resolution 48/141 of 20 December 1993, to provide, at the request of Governments, advisory services in this regard, as well as technical assistance in the development, production and distribution of appropriate teaching material for this purpose;

14. Stresses in this context that States must not punish personnel referred to in the preceding paragraph for not obeying orders to commit acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

15. Welcomes the report of the Committee against Torture on its seventeenth and eighteenth sessions (A/52/44);

16. Also welcomes the work of the Committee against Torture and its practice of formulating concluding observations after the consideration of reports, as well as its practice of carrying out inquiries into cases where there are indications of the systematic practice of torture in States parties;

17. Urges States parties to take fully into account, in implementing the provisions of the Convention, the conclusions and recommendations made by the Committee at the end of the consideration of their reports;

18. Requests the Secretary-General to submit to the Commission an annual report on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

19. Commends the Special Rapporteur for his work as reflected in his report (E/CN.4/1998/38 and Add.1 and Add.2);

20. Notes the recommendations of the Special Rapporteur contained in his report, as well as the recommendations made in previous years;

21. Decides to extend for three years the mandate of the Special Rapporteur on torture;

22. Invites the Special Rapporteur to continue to examine questions concerning torture and other cruel, inhuman or degrading treatment or punishment directed against women and conditions conducive to such torture, to make appropriate recommendations concerning the prevention and redress of gender-specific forms of torture, including through rape, and to exchange views with the Special Rapporteur on violence against women with a view to enhancing further their effectiveness and mutual cooperation;

23. Also invites the Special Rapporteur to continue to consider questions relating to the torture of children and conditions conducive to such torture and other cruel, inhuman or degrading treatment or punishment and to make appropriate recommendations concerning the prevention of such torture;

24. Approves the methods of work employed by the Special Rapporteur as set out in his previous report (E/CN.4/1997/4, annex), in particular with regard to urgent appeals, encourages him to continue to respond effectively to credible and reliable information that comes before him and invites him to continue to seek the views and comments of all concerned, including Governments, in the elaboration of his report;

25. Calls upon all Governments to cooperate with and assist the Special Rapporteur on torture in the performance of his task, to supply all necessary information requested by him and to react appropriately to his urgent appeals;

26. Urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer expeditiously;

27. Encourages all Governments to give serious consideration to inviting the Special Rapporteur to visit their countries, so as to enable him to fulfil his mandate even more effectively;

28. Requests the Special Rapporteur to continue to consider inclusion of information in his report on the follow-up by Governments to his recommendations, visits and communications;

29. Considers it desirable that the Special Rapporteur continue to exchange views with the relevant human rights mechanisms and bodies, especially the Committee against Torture and the High Commissioner for Human

Rights, in particular with a view to enhancing further their effectiveness and mutual cooperation, while avoiding unnecessary duplication, and that he should pursue cooperation with relevant United Nations programmes, notably that on crime prevention and criminal justice;

30. Invites the Special Rapporteur to present an oral interim report to the General Assembly at its fifty-third session on the overall trends and developments with regard to his mandate and a full report to the Commission at its fifty-fifth session;

31. Takes note of the reports of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (E/CN.4/1998/37 and Add.1 and Add.2 and A/52/387);

32. Expresses its appreciation to the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture for the work it has accomplished and to those Governments, organizations and individuals that have already contributed to the Fund;

33. Appeals to all Governments, organizations and individuals in a position to do so to contribute annually to the Fund, if possible with a substantial increase in the number and level of contributions in order to take into consideration the ever-increasing demand for assistance;

34. Stresses the need for contributions to the Fund on a regular basis and takes note of the request of the Board of Trustees that such contributions be paid before the Board's annual meeting in May in order, inter alia, to prevent the interruption of programmes in the continuation of which the Fund plays an instrumental role;

35. Stresses in particular the increasing need for assistance to rehabilitation services for victims of torture;

36. Requests the Secretary-General to continue to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

37. Renews its request to the Secretary-General to transmit to all Governments the appeals of the Commission for contributions to the Fund;

38. Calls upon the Board of Trustees of the Fund to report to the Commission at its fifty-fifth session and present an updated assessment of the global need for international funding of rehabilitation services for victims of torture;

39. Requests the Secretary-General to continue to keep the Commission informed of the operations of the Fund on an annual basis;

40. Urges States parties whose arrears pre-date the provision made by the Secretary-General for funding the Committee against Torture from the regular budget to fulfil their obligations forthwith;

41. Requests the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of an adequate and stable level of staffing as well as the necessary technical facilities for the United Nations bodies and mechanisms dealing with torture, in order to ensure their effective performance;

42. Decides to continue to consider these questions at its fifty-fifth session.